

Message Text

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SUBJECT: UNGA LEGAL COMITE: REPORT OF ILC

1. GENERAL DEBATE ON SUBJECT ITEM CONTINUED NOV 1 AND NOV 4 WITH INTERVENTIONS BY GUATEMALA, AUSTRIA, CUBA, FRG, BYELORUSSIA, YUGOSLAVIA, CHILE, DENMARK AND SYRIA.

2. GUATEMALAN DEL NOTED THAT ILC DRAFT ARTICLES ON TREATIES BETWEEN STATES AND IOS SHOULD EMPHASIZE INHERENT COMPETENCE OF AN IO TO ENTER INTO INTERNATIONAL AGREEMENTS. WITH RESPECT TO ILC WORK ON NON-NAVIGATIONAL USES OF WATERCOURSES, GUATEMALAN DEL WAS INTERESTED TO SEE WHAT INTERNATIONAL REGIME THE ILC WOULD DEVISE, ESPECIALLY WITH REGARD TO THOSE PORTIONS OF A WATERCOURSE WHICH WERE NOT INTERNATIONAL IN NATURE. IN A MANNER ONLY SLIGHTLY CRITICAL OF THE ILC, AND AIMED AT URGING THE ILC TO GIVE GREATER PRIORITY TO THE QUESTION OF THE MFN CLAUSE, GUATEMALA NOTED THAT IN ITS REPORT THE ILC DEVOTED ONLY 4 LINES TO THE MFN CLAUSE, AND 8 PAGES IN RESPONSE TO THE JOINT INSPECTION UNIT (JIU) REPORT. HE

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STATED THAT THE MFN CLAUSE IS VERY IMPORTANT TO DEVELOP-

ING COUNTRIES.

3. AUSTRIAN DEL BELIEVED PRESENT TEXT OF DRAFT ARTICLES ON SUCCESSION OF STATES IS APPROPRIATE FOR CONSIDERATION BY DIPLOMATIC CONFERENCE, AND SAW NO NEED TO REFER DRAFT ARTICLES BACK TO ILC. TURNING TO SUBJECT OF NON-NAVIGATIONAL USES OF WATERCOURSES, AUSTRIAN DEL MADE TWO MAIN POINTS: (A) HELSINKI RULES ADOPTED BY INTERNATIONAL LAW ASSOCIATION DO NOT PROVIDE A SOLUTION TO THE PROBLEMS POSED, AND THUS WHILE ILC SHOULD TAKE THEIR CONCLUSIONS INTO ACCOUNT, ILC SHOULD IN ESSENCE BEGIN ITS WORK FROM SCRATCH; AND, (B) POLLUTION STUDY SHOULD NOT BE TAKEN UP BY ILC AT THIS TIME BECAUSE PRACTICE IN THIS AREA IS TOO SCARCE--THUS IT MORE APPROPRIATE FOR ILC FIRST TO STUDY OTHER ISSUES UNDER THIS SUBJECT WHERE PRACTICE DOES EXIST AND RETURN TO POLLUTION LATER. ON JIU REPORT, AUSTRIAN DEL STATED THAT A RATIONAL DIALOGUE SHOULD HAVE BEEN ENGAGED, BUT ATTITUDE OF JIU REPORT WAS NOT CONDUCIVE TO SUCH DIALOGUE.

4. CUBAN DEL REMARKS WERE CONFINED ALMOST EXCLUSIVELY TO COLONIAL OR ANTI-COLONIAL IMPLICATIONS IN THE VARIOUS ACTIVITIES CARRIED ON BY ILC AT ITS TWENTY-SIXTH SESSION.

5. FRG DEL BELIEVED DRAFT ARTICLES ON SUCCESSION OF STATES WERE CORRECT IN ADOPTING A "CLEAN SLATE" APPROACH TO SUCCESSION, BUT THAT SUCH APPROACH SHOULD HAVE TAKEN MORE FULLY INTO ACCOUNT THE NEED FOR "CONTINUITY" OF TREATY RELATIONS IN SUCCESSION. ALSO FRG DEL THOUGHT ILC SHOULD STUDY DISPUTE SETTLEMENT MECHANISMS AND INCLUDE SAME IN DRAFT ARTICLES. FRG DEL THOUGHT TIME NOW APPROPRIATE FOR GOVERNMENT COMMENTS ON THESE DRAFT ARTICLES, WHICH AFTER ILC REVIEW BASED ON THESE COMMENTS, MIGHT BE APPROPRIATE FOR CONSIDERATION AT A DIPLOMATIC CONFERENCE. FRG DEL FELT IT WAS APPROPRIATE TO GIVE PRIORITY TO STUDY OF POLLUTION IN CONTEXT OF NON-NAVIGATIONAL USES OF WATERCOURSES, AND HOPED THAT DUPLICATION OF EFFORTS IN THIS GENERAL TOPIC WOULD BE AVOIDED. FRG DEL CONCLUDED THAT WHILE HE FAVORED 12-WEEK SESSION FOR NEXT ILC SESSION, THERE WAS NO NEED, AT THIS TIME, TO MAKE A PERMANENT DECISION.

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6. BYELORUSSIA SSR (BSSR) DEL APPRECIATED DRAFT ARTICLES ON SUCCESSION OF STATES AS THEY REFLECTED RIGHT OF SELF-DETERMINATION; HOWEVER, BSSR EXPRESSED VIEW THAT TEXT, IN GENERAL, NEEDS MORE WORK, NAMELY, COMMENTS OF STATES, FURTHER REVIEW BY ILC, AND RETURN TO THE LEGAL COMMITTEE, AFTER WHICH DIPLOMATIC CONFERENCE MIGHT BE APPROPRIATE. ON QUESTION OF DRAFT ARTICLES ON STATE RESPONSIBILITY,

BILITY, BSSR STATED (A) A STATE IS RESPONSIBLE FOR ACTS OF ANY INSTITUTION WITHIN ITS TERRITORY, WHETHER OR NOT INSTITUTION IS A GOVERNMENT ORGAN; (B) AS TO QUESTION OF WHAT IS A STATE ORGAN, RECOURSE SHOULD BE HAD TO STATE CONSTITUTION; AND (C) AS EXAMPLE OF (A), ABOVE, A STATE SHOULD BE HELD RESPONSIBLE FOR ACTS OF NEWS MEDIA EVEN WHEN MEDIA IS NOT STATE-OWNED, SINCE STATE IS INTERNATIONALLY RESPONSIBLE FOR ILLEGAL ACTS OF ITS CITIZENS--AND ADDITIONALLY--IF THE PRESS, UNDER UMBRELLA OF FREEDOM OF INFORMATION, SUPPORTS RACISMS, APARTHEID, AGGRESSION, ET AL, THIS A VIOLATION OF INTERNATIONAL LAW FOR WHICH A STATE SHOULD BE HELD RESPONSIBLE. BSSR DEL, IN PASSING TO SUBJECT OF ILC DRAFT ARTICLES ON TREATIES BETWEEN STATES AND IOS, NOTED DISSATISFACTION THAT DRAFT ARTICLES DID NOT CONFIRM THAT IT WOULD BE (SOME KIND OF) A VIOLATION (OF INTERNATIONAL LAW?) (OF ITS RELATIONS WITH THE UN?) FOR AN IO TO ENTER INTO AN INTERNATIONAL AGREEMENT WITH A RACIST OR AGGRESSOR STATE. BSSR COULD NOT SUPPORT 12-WEEK SESSION FOR ILC.

7. YUGOSLAV DEL FOUND DRAFT ARTICLES ON SUCCESSION OF STATES CONSISTENT WITH CONCEPT OF SELF-DETERMINATION AND APPROPRIATE TEXT FOR CONSIDERATION BY DIPLOMATIC CONFERENCE. ALSO, YUGOSLAV DEL SUPPORTED ILC POSITION VIS-A-VIS JIU REPORT AND SUPPORTED 12-WEEK SESSION.

8. CHILEAN DEL SPOKE IN LARGE PART ON ROLE OF ILC IN CODIFICATION OF INTERNATIONAL LAW. CHILEAN DEL NOTED THAT IN LAST FEW YEARS, ILC AGENDA HAS DEALT ALMOST EXCLUSIVELY WITH CONVENTIONAL MATTERS, AND NOT WITH NEW ISSUES OF SPECIAL INTEREST TO DEVELOPING COUNTRIES, NAMELY POLLUTION REGULATION, ENVIRONMENTAL PROTECTION, REGULATION OF MULTINATIONAL CORPORATIONS, TRADE, INTERNATIONAL INVESTMENT, OUTER SPACE, AND LAW OF THE SEA. CHILEAN DEL THOUGHT

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THIS WAS UNFORUNATE VACUUM IN ILC WORK, URGED ILC TO HANDLE MFN CLAUSE WITH PRIORITY, AND ESPECIALLY CONCENTRATE ON TRADE ISSUES ON CONTINUING BASIS. CHILEAN DEL ALSO NOTED THAT WHILE ELECTIONS TO ILC HAD BEEN POLITICIZED FOR SOME TIME, IT NOW APPEARED THAT APPOINTMENTS BY ILC TO VARIOUS POSTS WITHIN ILC WERE ALSO BECOMING POLITICIZED, AND LATTER COULD ONLY DETRACT FROM ILC WORK.

O. DANISH DEL SUGGESTED LEGAL COMITE BE CONSIDERED AS LOCUS FOR CODIFICATION CONFERENCES, AND ADVISED COMITE THAT DANISH GOVT IS MAKING ANOTHER SCHOLARSHIP GRANT OF \$4,000 FOR THE 1974-75 ILC INTERNATIONAL LAW SEMINAR. SCALI

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